

January 13, 2010

Mr. Ken Salazar – Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

FAX 1-202 –208-6956

Dear Mr. Secretary:

I retired from the Fish and Wildlife Service (Service) in 1990 with over 34 years of service in managerial and field positions. During that time I was able to speak scientific truths to power involving many fish, wildlife and water conservation issues. Many times this was under oath.

Recently the people of California were informed that the State Water Resources Control Board (State Board) will hold hearings regarding the Bay-Delta Flow and Water Quality criteria. I also learned that the Service employees have been instructed to participate in formulating a Department of Interior “unified voice” on the many issues involving this hearing. The Service will not be allowed to prepare or present free-standing testimony regarding fish and wildlife needs at these hearings.

I am concerned that a strong voice for the people’s fish and wildlife trust is being silenced. In California water, fish and wildlife issues, there is frequent conflict between the Bureau of reclamation with its wants and desires and the Service’s recommendations for the protection of public trust resources, uses and values impacted by projects operated by the Bureau of Reclamation.

The Regional Solicitor advises Department of the Interior agencies regarding various laws and associated legal matters. The Regional Solicitor also counsels Interior agencies at hearings before State Regulatory Boards.

Under the concept that the public has a right to know, each agency should have counsel to aggressively represent its position both internally, i.e., within the Department of Interior and externally, i.e., at board hearings. Such separate counsel would greatly reduce the appearance of conflict of interest, i.e., who is in whose hip pocket, the evidence of political pressures. With separate counsel, agencies would be better able to represent the laws and mandates, which affect them. Any Department of the Interior policy action or statement can be made after all facts are presented and the situation discussed. Without such an approach, a review group either internally or externally can't get a true understanding of the various facts and views to help it determine the merits of the situation or make knowledgeable decisions.

It seems most clear that policy determination should not be made until all facts are aired and the arguments heard. For example, in a water rights issue, the State Board should be able to get the facts of the situation and any supporting arguments from any

and all concerns including the various agencies of the Department, as interests contributing facts and information. The State Board then makes its determination on all the facts presented. It then develops recommended action based on law or established written policy. If, however, the Regional Solicitor or DOI superimposes his will and policy over the facts and policies of one agency in favor of another agency, he is presenting biased information. If this occurs, it can be easily alleged that the Regional Solicitor' is overstepping his consulting responsibilities. To overrule information/facts or recommendations pertinent to a situation seems to be procedurally out of line and not in the overall public trust and interest. Any action or policy decision by the Regional Solicitor for the Department should be stated only after all facts are in and the position of each agency is known publicly. This would be a Department position for consideration by the Board. To insert a policy decision before all the facts are available to a public review body results in biased information being presented, thereby defeating or circumventing the intent and purpose of such a review body. The same would hold true for public workshops, informational meetings, etc.

The State Board will have the findings of Audubon (National Audubon Society v. Department of Water and power, City of Los Angeles 33 Cal. 3d 419(1983) 658 P2d709, 189 Cal Rpt 346, cert Denied 464 U.S. 977- 1983) (also the Mono Lake), and U.S. v State Water Resources Control Board 227 Cal Rpt –1986 also Racanelli, the Federal Endangered Species Act (through biological opinions), other laws and court decisions. Court decisions will continue to shape how CVP water rights are implemented, how the CVP is operated and how the purposes of the CVP, as modified by the CVP1A, are implemented.

It is critically important for the FWS scientists speak about the people's fish and wildlife resources that are held as a public trust. It is important to have the scientists to present the best biological, ecological and water quality data regarding the needs of Delta fish and wildlife resources to a public body in an open forum and not through parent agency mouthpiece.

Sincerely.

Felix E. Smith
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Please see attachment: **The Intent of the Law, The Department of the Interior
and The Courts**

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